

FILED

JUL 13 2010

GIUSEPPE VIOLA

IN PRO PER

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

MARICOPA COUNTY JAIL

201 S. 4th AVE.

PHOENIX, AZ 85003

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In Re

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CASE N° 10-30904 DM

JOSEPH J. VIOLA,

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(CHAPTER 7 INVOLUNTARY)

DEBTOR.

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ADVERSARY PROCEEDING N° 10-03109

FRANK RACIOPPO, AN INDIVIDUAL,

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et al,

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• MOTION TO DISMISS

PLAINTIFFS,

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• MOTION FOR SANCTIONS

v.

JOSEPH VIOLA, AN INDIVIDUAL,

3

et al

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ORAL ARGUMENT REQUESTED

DEFENDANTS.

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COMES NOW GIUSEPPE VIOLA, IN PRO PER, IMPROVIDENTLY REFERRED TO WITHIN,
BUT NOT NAMED AS A DEFENDANT OF, THE ABOVE ENCAPTIONED ACTION, AND
RESPECTFULLY REQUESTS THE ISSUANCE OF THE ABOVE ENUMERATED ORDERS,
AND IN SUPPORT THEREOF, REPRESENTS AS FOLLOWS:

JURISDICTION

1. ON JUNE 9, 2010, THIS COURT RECEIVED FROM, AND FILED ON BEHALF OF THIS
RESPONDENT, A SERIES OF MOTIONS, INCLUDING ONE TO DISMISS THE UNDERLYING
PETITION FOR INVOLUNTARY BANKRUPTCY. THE COURT ADDITIONALLY ORDERED THE

PARTIES OF RECORD, INCLUDING THAT OF THE RACIOPPO PLAINTIFFS, REPRESENTED BY WILLIAM McGRANE, TO FILE RESPONSES THERETO WITH THE COURT, AND TO SERVE UPON THIS RESPONDENT, NO LATER THAN JUNE 28, 2010.

2. THIS RESPONDENT FILED A REPLY TO THE RESPONSES OF THE TRUSTEE, AND TO THAT OF THE RACIOPPO PARTIES, SO AS TO ALSO ARRIVE AT THE COURT BY ITS STATED DEADLINE, IN WHICH A REPLY WAS RESERVED FOR THE KIRSCH RESPONSE, AND UPON ITS RECEIPT, IN DUE COURSE, WAS ALSO FILED SHORTLY THEREAFTER.
3. THE NATURE OF THE MOTIONS OF 9 JUNE 2010 ARE FUNDAMENTAL AND ESSENTIAL TO THE VIABILITY OF THE EXISTENCE OF THE PETITION FOR INVOLUNTARY BANKRUPTCY. IT IS ABUNDANTLY APPARENT THAT THIS COURT WOULD NOT HAVE GRANTED SUCH REVIEW IN THE ABSENCE OF A REASONABLY CERTAIN SHOWING THAT CRITICAL DUE PROCESS RIGHTS OF THE RESPONDENT HAD BEEN VIOLATED.
4. ALTHOUGH THE RESPONDENT RECEIVED SERVICE ON 1 JULY 2010 AT 1⁵⁰ PM, HE HAS WAITED FOR SUFFICIENT POSTAL TRANSIT TIME FROM THE STATED SUBMISSION DATE BY COUNSEL OF 29 JUNE 2010 TO ALLOW FOR ANY CONSIDERATION CONTEMPLATED TO BE COMMUNICATED BY THE COURT, AS SET FORTH IN ITS ORDER DIRECTING RESPONSES OF 9 JUNE 2010.
5. THE FILING OF THIS ADVERSARY PROCEEDING SHOWED DISRESPECT AND CONTEMPT FOR THIS COURT IN THAT IT DID NOT PERMIT THE FULL CONSIDERATION OF THE ISSUES RAISED BY THE MOTION TO DISMISS, BUT RATHER, IS PRESUMPTUOUSLY PREMATURE IN ITS ENTIRETY, AS NO FINDINGS OF THE COURT HAVE YET BEEN COMMUNICATED.
6. THE ALLEGATION OF A CLASS KNOWN AS A "PROPOSED RICO CLASS" IS VAGUE AND OVERBROAD IN DISTING COUNTERPOINT TO THE REQUIREMENTS FOR SPECIFICITY AS ESTABLISHED.

7. THERE IS NO INDICATION OF HOW, WHEN, OR UPON WHOM SERVICE WAS EFFECTED UPON CO-DEFENDENTS SCHRAMMEL OR CITIBANK, AND INDEED, SELECTION OF FORUM AS TO AT LEAST THOSE DEFENDANTS SEEMS INAPPROPRIATE.

8. PLAINTIFFS, THROUGH THEIR COUNSEL, SEEK TO PERPETUATE THE YET UNPROVEN RED HERRING THAT THIS RESPONDENT IS THE SAME PARTY FOR WHICH HE NOW AWAITS CRIMINAL PROCESS IN ARIZONA FOR EVENTS ALLEGED TO HAVE ARISEN TWENTY THREE YEARS AGO. AS SUCH, THE RESPONDENT, AS AN UNNAMED DEFENDANT OF THE PRESENT ACTION, IN WHICH HE APPEARS BY REFERENCE ONLY, MAKES THESE MOTIONS BY GENERAL APPEARANCE.

9. THE RESPONDENT, IN LIGHT OF HIS LACK OF ACCESS TO PHOTOCOPY FACILITIES AND LIMITED POSTAL SERVICE, RESPECTFULLY REQUESTS THAT THE COURT MAKE A SUFFICIENT NUMBER OF COPIES OF THESE MOTIONS FOR THE PARTIES TO THIS ADVERSARY PROCEEDING, AND DISTRIBUTE SAME TO SAID PARTIES, INCLUDING ONE IN CONFIRMATION HERE IN RETURN.

WHEREFORE, THE RESPONDENT PRAYS THAT THIS COURT ENTER ITS ORDERS TO DISMISS THE PRESENT ACTION, TO SET SANCTIONS AGAINST OPPOSING COUNSEL FOR CONTEMPTUOUSLY FILING IN THE ABSENCE OF THE AWAITED REVIEW OF THIS COURT, AND FOR SUCH OTHER REMEDIES AS THE COURT IN ITS DISCRETION DEEMS PROPER. HE AGAIN RENOVES HIS REQUEST THAT THE COURT EXERCISE ITS AUTHORITY TO BRING THIS RESPONDENT BEFORE IT FOR ORAL ARGUMENT.

RESPECTFULLY SUBMITTED THIS 6th DAY OF JULY, 2010.

/s/ GIUSEPPE VIOLA